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Counsel for the First Lien Steering Committee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA
SOUTHERN DIVISION**

IN RE: § Case No. 09-14814-LBR
§
THE RHODES COMPANIES, LLC, § (JointlyAdministered)
§ aka "Rhodes Homes," *et al.*, §
§
§**Debtors.¹** § Chapter 11
§
§

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Heritage Land Company, LLC (2918); The Rhodes Companies, LLC (3060); Rhodes Ranch General Partnership (1760); Tick, LP (0707); Glynda, LP (5569); Chalkline, LP (0281); Batcave, LP (6837); Jackknife, LP (6189); Wallboard, LP (1467); Overflow, LP (9349); Rhodes Ranch Golf and Country Club (9730); Tuscany Acquisitions, LLC (0206); Tuscany Acquisitions II, LLC (8693); Tuscany Acquisitions III, LLC (9777); Tuscany Acquisitions IV, LLC (0509); Parcel 20 LLC (5534); Rhodes Design and Development Corp. (1963); C&J Holdings, Inc. (1315); Rhodes Realty, Inc. (0716); Jarupa LLC (4090); Elkhorn Investments, Inc. (6673); Rhodes Homes Arizona, LLC (7248); Rhodes Arizona Properties, LLC (8738); Tribes Holdings LLC (4347); Six Feathers Holdings, LLC (8451); Elkhorn Partners, A Nevada Limited Partnership (9654); Bravo Inc. (2642); Gung-Ho Concrete, LLC (6966); Geronimo Plumbing, LLC (6897); Apache Framing, LLC (6352); Tuscany Golf Country Club, LLC (7132); Pinnacle Grading, LLC (4838).

<p>Affects:</p> <p><input checked="" type="checkbox"/> All Debtors</p> <p><input type="checkbox"/> Affects the following Debtor(s)</p>	<p>§ DECLARATION OF RICHARD DIX IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED MODIFIED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE FOR THE RHODES COMPANIES, LLC, <u>ET AL.</u></p>
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I, Richard Dix, hereby declare:

1. I am the founder, President and Chief Executive Officer of Winchester

Carlisle Holdings and its subsidiaries or affiliates, Winchester Carlisle Partners ("WCP"),

Nathan Grace Real Estate, Carwin Advisors, and Dunhill Homes. Previously, I served as

the Mountain West Area President for Pulte Homes, Inc. ("Pulte") based in Las Vegas from

March 2007 until February 2008. I also served as Division President of Pulte for Dallas/Fort

Worth from November 2003 until March 2007. From February 2003 to November 2003, I

served in various management roles with Pulte in the Detroit and Philadelphia metropolitan

areas. Prior to joining Pulte Homes, I served as Director of Business Development &

Strategy – Information Services & Systems for General Motors from October 2000 to

February 2003. I also have experience operating various entrepreneurial ventures in

manufacturing, retail and technology

I submit this declaration in support of confirmation of the Second Amendment.

Modified Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The

Rhodes Companies, LLC, et al. (as may be amended, the "Plan"). Unless otherwise stated,

have personal knowledge of the facts stated in this declaration.

History of Proposed Restructuring²

3. As represented by the Debtors, at the end of the fourth quarter of 2008, sales in the Las Vegas market of new, detached homes were down 93% (to 522 net sales) from the peak (7,731 quarterly net sales) that occurred in the second quarter of 2005. The median base price for a detached single family home dropped 39% from the peak achieved in the fourth quarter of 2005.

4. Although the Debtors had made cost reductions in general overhead and other areas, including employee layoffs, many factors, including the severe downturn of the Las Vegas market, significant supply overhang, and general economic malaise combined to create an environment where the Debtors were unable to meet their March 2009 debt and amortization payments. The First Lien Steering Committee was formed in early March 2009 to negotiate the terms of a forbearance agreement and consensual restructuring with the Debtors after it became apparent that the Debtors would not be able to make their regularly scheduled interest and amortization payments on the first lien debt.

5. On March 31, 2009, an interest payment in the amount of approximately \$9 million and a principal payment in the amount of \$10.75 million was due and owing on the First Lien Credit Agreement and an interest payment in the amount of approximately \$2.4 million was due and owing on the Second Lien Credit Agreement. Despite extended and intensive negotiations between the First Lien Lenders and the Debtors, when no agreement was reached by March 31, 2009, the Debtors commenced these Chapter 11 Cases on March 31, 2009 and April 1, 2009 to avail themselves of the protections of the Bankruptcy Code.

² Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Plan or the Second Amended Modified Disclosure Statement for the Plan (the "Disclosure Statement"), as applicable.

1 6. On either March 31, 2009 or April 1, 2009, each of the Debtors Filed a
 2 voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue
 3 to operate their business and manage their properties as debtors in possession pursuant to
 4 sections 1107(a) and 1108 of the Bankruptcy Code.
 5

6 7. On August 17, 24 and 25, 2009, the First Lien Steering Committee, the
 7 Second Lien Agent, the Creditors' Committee, the Debtors and the Rhodes Entities
 8 (collectively, the "Mediation Parties") participated in a mediation over the terms of a
 9 proposed plan of reorganization for the Debtors before the Honorable Richard Neiter, United
 10 States Bankruptcy Court, Central District of California. During the mediation, the
 11 Mediation Parties reached agreement in principle on a comprehensive settlement (the
 12 "Mediation Settlement"). The Plan embodies the terms of the Mediation Settlement.
 13

14 8. In general, the Mediation Settlement and the Plan provide, among other
 15 things, that the First Lien Lenders will assume ownership of the Debtors and will continue to
 16 operate the Debtors as a going concern homebuilder primarily in the Las Vegas, Nevada
 17 market. In addition, the First Lien Lenders will receive, on account of their Secured Claims,
 18 \$1.5 million in cash from their collateral and their pro rata share of \$50 million in new
 19 secured notes. The First Lien Lenders will use the \$1.5 million of the cash they receive
 20 from their collateral to purchase certain General Unsecured Claims for the allowed amount
 21 of such Claims. The Second Lien Lenders will receive 50% of the net proceeds of certain
 22 pending litigation on account of their Secured Claims. The Rhodes Entities will, among
 23 other things, pay \$3.5 million in cash to the Reorganized Debtors and will receive, among
 24 other things, (i) a limited release as described in the Plan, (ii) certain assets located in
 25 Arizona, and (iii) certain tax benefits. The Plan also provides for the establishment of a
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Litigation Trust that will pursue certain Claims and Causes of Action belonging to the
Debtors' estates for the benefit of those Holders of General Unsecured Claims whose Claims
are not purchased by the First Lien Lenders. The First Lien Lenders and the Second Lien
Lenders will also receive distributions from the Litigation Trust as unsecured creditors on
account of their First Lien Lender Deficiency Claims and Second Lien Lender Deficiency
Claims.

8 9. I believe that confirmation of the Plan is in the best interests of the Debtors
9 and all creditor constituencies and represents the best possible restructuring alternative for
0 the Debtors' businesses.

Valuation Analysis

3 10. In connection with the First Lien Steering Committee's efforts to formulate
4 and implement a plan of reorganization, the First Lien Steering Committee requested that
5 WCP perform a valuation analysis of the Reorganized Debtors. I have been directly
6 involved in the preparation by professionals at WCP of an analysis of the Reorganized
7 Debtors' total enterprise value on a going concern basis upon the Reorganized Debtors'
8 emergence from chapter 11. In preparing the analysis (the "Valuation"), WCP used a
9 valuation date of January 1, 2010. WCP prepared the Valuation based on financial
0 projections and financial and market conditions prevailing as of the date of the Valuation.
1
2 WCP was assisted in the preparation of the Valuation by Robert Charles Lesser & Co.
3 ("RCLCO"), the First Lien Steering Committee's valuation consultant.
4

5 11. In preparing the Valuation, WCP, among other things, (i) reviewed certain
6 internal financial and operating data of the Debtors; (ii) reviewed certain operating and
7 financial forecasts; (iii) performed discounted cash flow ("DCF") analyses; (iv) considered

1 sales transactions for properties comparable to certain of the Debtors' assets; (v) considered
 2 information from qualified third party sources relating to revenue and cost assumptions; and
 3 (vi) conducted such other analyses as deemed necessary to complete the Valuation.

4 12. Based on the foregoing, WCP provided a valuation to the First Lien Steering
 5 Committee that the total enterprise value on a "reorganization value" basis for the
 6 Reorganized Debtors, on an assumed valuation date of January 1, 2010, is between \$89.2
 7 million and \$111.5 million, with a midpoint value of \$99.6 million.

8 13. Based upon the estimated range of the reorganization value of the
 9 Reorganized Debtors of between \$89.2 million and \$111.5 million and assumed total debt of
 10 approximately \$415 million, WCP believes there is no value available for distribution to
 11 Holders of Equity Interests.

12 14. The estimates contained in WCP's analysis and the ranges of valuations
 13 resulting from any particular analysis are not necessarily indicative of actual values or
 14 predictive of future results or values, which may be significantly different from the values
 15 suggested by the analyses. Further, in addition to the assumptions and qualifications
 16 discussed herein, the valuation analyses are subject to the assumptions and qualifications set
 17 forth in the Disclosure Statement.

The Disclosure Statement

18 15. This Court has determined that the Disclosure Statement provided adequate
 19 information for creditors to make an informed judgment about the Plan. The First Lien
 20 Steering Committee, with the assistance of its professionals, expended a significant amount
 21 of time and effort preparing the Disclosure Statement and welcomed input and comment
 22 from all parties in interest. The Disclosure Statement contains summaries of certain
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provisions of the Plan, statutory provisions, documents relating to such, events leading to the commencement of the Chapter 11 Cases, and financial information. Specifically, the Disclosure Statement sets forth certain detailed information regarding the Debtors' history, projections for future operations, and significant events that occurred during the Chapter 11 Cases. The Disclosure Statement also describes the Plan, effects of the Confirmation Order, and the manner in which distributions will be made under the Plan. Additionally, the Disclosure Statement discusses the confirmation process and the voting procedures that creditors in the Voting Classes must follow for their votes to be counted.

Solicitation of the Plan

16. I have been advised and believe that the First Lien Steering Committee's procedures for solicitation of votes to accept or reject the Plan were in compliance with the rules, regulations, and the Solicitation Procedures Order, and that such procedures satisfy Bankruptcy Code section 1126 and Bankruptcy Rules 3017 and 3018.

17. By order of this Court, dated April 8, 2009, the Debtors retained Omni Management Group, LLC ("Omni") to serve as their Claims and Solicitation Agent. In connection with its role as the Debtors' Claims and Solicitation Agent, Omni was directed to (i) solicit votes from Holders of Claims entitled to vote on the Plan and (ii) review and tabulate the ballots that were subsequently submitted. As set forth in the chart below and in the Voting Report filed contemporaneously herewith as Exhibit A to the Osborne Declaration (the "Voting Report"), on which the chart below is based, the Plan has been accepted by Holders of Claims in Classes A-1, A-2, C-2 and C-3:

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Total Ballots Received			
ACCEPT		REJECT	
Number	Amount	Number	Amount
Class A-1 – First Lien Lender Secured Claims			
89	\$303,788,681.44	6	\$7,602,129.55
Class A-2 – Second Lien Lender Secured Claims			
19	\$37,856,465.48	0	\$0
Class C-1 – General Unsecured Claims			
10	\$483,486.91	5	\$9,976,695.10
Class C-2 – First Lien Lender Deficiency Claims			
62	\$228,906,370.83	6	\$7,602,129.55
Class C-3 – Second Lien Lender Deficiency Claims			
19	\$37,856,465.48	0	\$0

18. Because of their treatment as Unimpaired under the Plan, the First Lien
 19. Steering Committee did not solicit the votes of Holders of (i) Administrative Claims and
 20. Priority Tax Claims and (ii) Claims in Class A-3 (Other Secured Claims) and Class B
 21. (Priority Non-Tax Claims).

18. Because they were deemed to reject the Plan, the First Lien Steering
 19. Committee did not solicit votes from Holders of Claims or Interests in Class C-4
 20. (Subordinated Claims), Class D (Old Equity Interests) and Class E (Intercompany Claims).

18. To the best of my knowledge, the First Lien Steering Committee did not
 19. engage in any solicitation of acceptances of the Plan other than by utilizing the solicitation
 20. materials and procedures described in the Osborne Declaration.

Compliance with Bankruptcy Code Sections 1122 and 1123

21. Article III.A of the Plan provides for the separate classification of Claims and
 22. Interests in ten individual Classes, based upon the legal nature and/or priority of such Claims
 23. and Interests. Administrative Claims and Priority Tax Claims are not classified and are
 24. separately treated in Articles II.A and II.B of the Plan, respectively. The Classes of Claims
 25. and Interests are as follows:

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Class A-1	Class A-1 provides for the separate classification of First Lien Lender Secured Claims
Class A-2	Class A-2 provides for the separate classification of Second Lien Lender Secured Claims
Class A-3	Class A-3 provides for the separate classification of Other Secured Claims
Class B	Class B provides for the separate classification of Priority Non-Tax Claims
Class C-1	Class C-1 provides for the separate classification of General Unsecured Claims
Class C-2	Class C-2 provides for the separate classification of First Lien Lender Deficiency Claims
Class C-3	Class C-3 provides for the separate classification of Second Lien Lender Deficiency Claims
Class C-4	Class C-4 provides for the separate classification of Subordinated Claims
Class D	Class D provides for the separate classification of Old Equity Interests
Class E	Class E provides for the separate classification of Intercompany Claims

22. I am advised and believe that each of the Claims or Interests in each particular class is substantially similar to the other Claims or Interests in such Class.

Compliance With Bankruptcy Code Section 1123

(A) Contents of Plan (11 U.S.C. 1123(a))

23. Designation of Classes of Claims and Interests. As set forth above, Article III.A of the Plan designates nine Classes of Claims and one Class of Interests. I am advised and believe, therefore, that the Plan complies with Bankruptcy Code section 1123(a)(1).

24. Specification of Unimpaired Classes. Article III.B of the Plan specifies the Classes of Claims that are Unimpaired under the Plan. I am advised and believe, therefore, that the Plan complies with Bankruptcy Code section 1123(a)(2).

25. Treatment of Impaired Classes. Article III.B of the Plan specifies the treatment of those Claims and Interests that are Impaired under the Plan. I am advised and believe, therefore, that the Plan complies with Bankruptcy Code section 1123(a)(3).

1 26. Equal Treatment Within Classes. Article III.B of the Plan provides for
2 equality of treatment for each Claim or Interest within a particular Class. I am advised and
3 believe, therefore, that the Plan complies with Bankruptcy Code section 1123(a)(4).

4 27. Implementation of Plan. I am advised and believe that the Plan provides
5 adequate and proper means for its implementation, including, but not limited to, (i) the
6 issuance of Newco Equity Interests and the New First Lien Notes, and (ii) the cancellation
7 of existing Equity Securities. I am advised and believe, therefore, that the Plan complies
8 with Bankruptcy Code section 1123(a)(5).

9 28. Charter Provisions. Article IV.J of the Plan provides that the Newco
10 organizational documents will, among other things, include a provision prohibiting the
11 issuance of non-voting Equity Securities to the extent required by Bankruptcy Code section
12 1123(a)(6). Based on the foregoing, I am advised and believe that the Plan complies with
13 Bankruptcy Code section 1123(a)(6).

14 29. Selection of Officers and Directors. Article IV.M of the Plan provides that
15 the board of directors of the Reorganized Debtors or similar governing entities will be
16 composed of one or more members appointed by the First Lien Steering Committee. In
17 addition, the Plan provides that, on the Effective Date, a chief executive officer or similar
18 management selected by the board of directors of the Reorganized Debtors shall be
19 appointed. Finally, the Plan provides that the identity of such officers and directors shall be
20 disclosed at or prior to the Confirmation Hearing. The provisions of the Plan for the
21 selection of directors and officers are consistent with the interests of creditors and Interest
22 Holders and with public policy as to the manner and selection of any officer, director, or
23 trustee and any successor thereto. Moreover, as described further below, such Plan
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provisions satisfy the requirements in Bankruptcy Code section 1129(a)(5) in that the First Lien Steering Committee will disclose, on or prior to the Confirmation Date, the identity and affiliations of any Person proposed to serve on the initial boards of directors of the Reorganized Debtors and, to the extent such Person is an insider, the nature of any compensation to be paid to such Person. I am advised that the classification and composition of the boards of directors of each of the Reorganized Debtors are consistent with each Reorganized Debtor's amended or restated certificate of incorporation, as applicable, the other applicable constituent documents of each Reorganized Debtor, and applicable law. I am advised and believe, therefore, that the Plan complies with Bankruptcy Code section 1123(a)(7).

30. Future Income. Each of the Debtors are corporations, partnerships or limited liability companies. Accordingly, I am advised and believe that Bankruptcy Code section 1123(a)(8) is not implicated by the Plan.

(B) Contents of Plan (11 U.S.C. 1123(b))

31. I am advised and believe that each provision of the Plan is consistent with Bankruptcy Code section 1123(b):

- Pursuant to Article III.B of the Plan, Classes A-3 and B are Unimpaired, and Classes A-1, A-2, C-1, C-2, C-3, C-4, D and E are Impaired, as contemplated by Bankruptcy Code section 1123(b)(1).
- Article V.A of the Plan provides that the Debtors' executory contracts and unexpired leases that have not been assumed or rejected pursuant to an order of the Court prior to the Effective Date shall be deemed rejected, except for certain executory contracts and unexpired leases identified in the Plan, as contemplated by Bankruptcy Code section 1123(b)(2).
- Article IV.P of the Plan provides that the Reorganized Debtors and/or the Litigation Trust, as applicable, shall

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1 retain and may enforce any and all Causes of Action,
 2 whether arising before or after the Petition Date,
 3 including those actions specifically enumerated on
 4 Exhibit L to the Disclosure Statement. The Causes of
 5 Action to be transferred to the Litigation Trust are
 6 specifically set forth in Exhibit G to the Disclosure
 7 Statement. Notwithstanding the foregoing, the Plan
 8 provides for (i) the release of the Rhodes Entities from
 9 certain avoidance actions arising under chapter 5 of the
 10 Bankruptcy Code, (ii) the release of the Released
 11 Parties (as defined below) from certain Claims and
 12 Causes of Action belonging to the Debtors, and
 13 (iii) the voluntary release of First Lien Lenders from
 14 certain Claims and Causes of Action that could be
 15 asserted by other First Lien Lenders as part of the
 16 Mediation Settlement embodied in the Plan. Such
 17 provisions are contemplated by Bankruptcy Code
 18 section 1123(b)(3).

- 19 • Article XII of the Plan provides that, among other
 20 things, the Court shall retain jurisdiction over all
 21 matters arising out of and related to the Chapter 11
 22 Cases and the Plan. Such provision is appropriate
 23 under Bankruptcy Code section 1123(b)(6).

24 **Compliance With Bankruptcy Code Section 1129**

25 32. I believe that the First Lien Steering Committee submitted the Plan in good
 26 faith and I have been advised that the Plan satisfies (i) each of the requirements of
 27 Bankruptcy Code section 1129(a), with the exception of section 1129(a)(8), and (ii) each of
 28 the requirements set forth in Bankruptcy Code section 1129(b)(1).

29 33. Although I have been informed that the Plan does not comply with
 30 Bankruptcy Code section 1129(a)(8) with respect to Classes C-1, C-4, D and E (together, the
 31 “Rejecting Classes”), I have been advised and believe that the Plan is confirmable because
 32 the Plan satisfies Bankruptcy Code sections 1129(b)(1) and 1129(b)(2) of the Bankruptcy
 33 Code with respect to such Classes.

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1 34. Section 1129(a)(1). I have been advised and believe that the Plan complies
2 fully with the requirements of both sections 1122 and 1123 (as described above), as well as
3 other provisions of the Bankruptcy Code, as required by Bankruptcy Code section
4 1129(a)(1).
5

6 35. Section 1129(a)(2). I am advised and believe that the First Lien Steering
7 Committee has complied with the applicable provisions of the Bankruptcy Code, thereby
8 satisfying Bankruptcy Code section 1129(a)(2).

9 36. Section 1129(a)(3). The Plan is proposed with the legitimate and honest
10 purpose of restructuring the Debtors (and I am advised and believe not by any means
11 forbidden by law) and expeditiously making distributions to the Debtors' creditors. The
12 Plan is the product of extensive, arm's-length negotiations between the First Lien Steering
13 Committee, the Debtors, the Rhodes Entities, the Creditors' Committee and the Second Lien
14 Agent. The Plan reflects the results of these negotiations and takes into account the interests
15 of the Debtors' creditor constituencies. At the same time, the Plan allows for the
16 Reorganized Debtors to emerge from bankruptcy as viable, new entities with cash flows and
17 financing necessary to implement their business plan. I am advised and believe, therefore,
18 that the Plan complies with Bankruptcy Code section 1129(a)(3).
19

20 37. Section 1129(a)(4). I have been informed that, except as otherwise ordered
21 by the Court, all fees and expenses of Professionals accrued through the Effective Date will
22 be subject to the interim (if applicable) and final approval of this Court. I am advised and
23 believe, therefore, that the Plan complies with Bankruptcy Code section 1129(a)(4).
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25 38. Section 1129(a)(5). Pursuant to Article IV.M of the Plan, the First Lien
26 Steering Committee has disclosed the identity and compensation of the officers and directors
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1 of the Reorganized Debtors to the Court. *See* Notice of Disclosure of Directors and Officers
 2 Pursuant to 11 U.S.C. § 1129(a)(5) for Second Amended Modified Plan of Reorganization
 3 Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies, LLC, *et al.*,
 4 which has been filed contemporaneously herewith. Accordingly, I am advised and believe
 5 that Bankruptcy Code section 1129(a)(5) has been complied with.

6
 7 39. Section 1129(a)(6). I am advised and believe that Bankruptcy Code section
 8 1129(a)(6) is inapplicable because the Plan does not provide for changes in any rates subject
 9 to regulatory approval.

10
 11 40. Section 1129(a)(7). As set forth in greater detail below, the Liquidation
 12 Analysis (as defined below) contained in the Disclosure Statement establishes that each
 13 Holder of a Claim or Interest in an Impaired Class either (i) has accepted the Plan or (ii) will
 14 receive or retain under the Plan, on account of such Claim or Interest, property of a value, as
 15 of the Effective Date of the Plan, that is the same or greater than the amount that it would
 16 have received if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. I am
 17 advised and believe, therefore, that the Plan complies with Bankruptcy Code section
 18 1129(a)(7).

19
 20 41. Section 1129(a)(8). As set forth in the Voting Report, the Holders of Claims
 21 in the following Classes voted to accept the Plan: (i) Class A-1 (First Lien Lender Secured
 22 Claims); (ii) Class A-2 (Second Lien Lender Secured Claims); (iii) Class C-2 (First Lien
 23 Lender Deficiency Claims); and (iv) Class C-3 (Second Lien Lender Deficiency Claims).
 24 Classes C-4 (Subordinated Claims), Class D (Old Equity Interests) and Class E
 25 (Intercompany Claims) are not entitled to receive or retain any property under the Plan and I
 26 am advised and believe that they are deemed to have rejected the Plan pursuant to
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1 Bankruptcy Code section 1126(g). In addition, Class C-1 (General Unsecured Claims)
 2 voted to reject the Plan.

3 42. I am advised and believe, therefore, that the Plan does not satisfy Bankruptcy
 4 Code section 1129(a)(8). Notwithstanding the lack of compliance with Bankruptcy Code
 5 section 1129(a)(8) with respect to the Rejecting Classes, I am advised and believe that the
 6 Plan is confirmable because the Plan satisfies Bankruptcy Code section 1129(b) with respect
 7 to such Classes.

8 43. Section 1129(a)(9). I am advised and believe that, in accordance with
 9 Bankruptcy Code section 1129(a)(9)(A), Article II.A of the Plan provides that each Allowed
 10 Administrative Claim shall be paid in full in cash (i) on the later of (a) the Effective Date,
 11 (b) the date on which the Court enters an order allowing such Allowed Administrative
 12 Claim, or (c) the date on which the Reorganized Debtors or the Debtors, with the consent of
 13 the First Lien Steering Committee (and in consultation with the First Lien Agent and Second
 14 Lien Agent) and the Holder of such Allowed Administrative Claim otherwise agree, and
 15 (ii) in such amounts as (a) are incurred in the ordinary course of business by the Debtors,
 16 (b) are Allowed by the Court, (c) may be agreed upon between the Debtors, with the consent
 17 of the First Lien Steering Committee (and in consultation with the First Lien Agent and
 18 Second Lien Agent) or (d) may otherwise be required under applicable law. Allowed
 19 Administrative Claims relating to liabilities incurred in the ordinary course of business by
 20 the Debtors, as debtors in possession, shall be paid by the Debtors or by the Reorganized
 21 Debtors in the ordinary course of business and subject to the conditions of the agreements
 22 governing or relating to such obligations.

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1 44. Article II.B of the Plan classifies all Priority Tax Claims and provides that
 2 such Claims will be paid in full, in cash, upon the later of (i) the Effective Date, (ii) the date
 3 upon which there is a Final Order allowing such Claim as an Allowed Priority Tax Claim,
 4 (iii) the date that such Allowed Priority Tax Claim would have been due if the Chapter 11
 5 Cases had not been commenced, or (iv) upon such other terms as may be agreed to between
 6 the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering
 7 Committee (and in consultation with the First Lien Agent and Second Lien Agent), and any
 8 Holder of an Allowed Priority Tax Claim. Article II.B of the Plan further provides that, in
 9 lieu of payment in full on the Effective Date, the Reorganized Debtors or the Debtors may
 10 make deferred cash payments, together with interest as provided in the Plan, in respect of
 11 Allowed Priority Tax Claims.

12 45. For the reasons set forth above, I am advised and believe that the Plan
 13 complies with Bankruptcy Code section 1129(a)(9).

14 46. Section 1129(a)(10). As set forth in the Voting Report, the following Classes
 15 of Impaired Claims have voted to accept the Plan, without including the acceptance of the
 16 Plan by insiders, if any, in such Classes: Class A-1 (First Lien Lender Secured Claims);
 17 Class A-2 (Second Lien Lender Secured Claims; Class C-2 (First Lien Lender Deficiency
 18 Claims); and Class C-3 (Second Lien Lender Deficiency Claims). Accordingly, I am
 19 advised and believe that the Plan satisfies the requirements of Bankruptcy Code section
 20 1129(a)(10).

21 47. Section 1129(a)(11). As set forth in greater detail below, I believe that the
 22 Plan is feasible. The Debtors will have sufficient funds to make all the cash payments called
 23 for under the Plan. Sources of available cash include existing cash balances and the \$3.5
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1 million cash payment to be made by the Rhodes Entities to the Reorganized Debtors as
 2 contemplated by the Mediation Settlement, and the Reorganized Debtors or post
 3 Confirmation Date borrowings under other available facilities of the Debtors or the
 4 Reorganized Debtors. I also believe that it is likely that the Debtors will be able to continue
 5 as viable entities. No reasonable analysis leads to the conclusion that following
 6 confirmation of the Plan, the Debtors will be liquidated or require further financial
 7 reorganization. Confirmation of the Plan will allow the Reorganized Debtors to emerge
 8 from chapter 11 as viable entities with cash flows and financing sufficient to permit them to
 9 implement their business strategy as described in the Disclosure Statement. I am advised
 10 and believe, therefore, that the Plan complies with Bankruptcy Code section 1129(a)(11).

13 48. Section 1129(a)(12). Upon information and belief, all fees required to be
 14 paid by Bankruptcy Code section 1129(a)(12) incurred through the date of confirmation of
 15 the Plan either have been paid by the Debtors during the pendency of these cases and/or will
 16 be paid on the Effective Date. Article II.A of the Plan requires payment of all fees payable
 17 under 28 U.S.C. § 1930 on or before the Effective Date.

19 49. Section 1129(a)(13). I am advised and believe that Bankruptcy Code section
 20 1129(a)(13) is inapplicable because the Debtors have no retiree obligations.

21 50. Section 1129(a)(14)-(15). Each of the Debtors are business entities.
 22 Accordingly, I am advised and believe that Bankruptcy Code sections 1129(a)(14) and (15)
 23 are not implicated by the Plan.

25 51. Section 1129(a)(16). Each of the Debtors is a moneyed, business, or
 26 commercial entity. Accordingly, I am advised and believe that Bankruptcy Code section
 27 1129(a)(16) is not implicated by the Plan.

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The Plan Satisfies the “Cram Down” Requirements Under Section 1129(b) of the Bankruptcy Code

52. The Plan Does Not Discriminate Unfairly With Respect to the Rejecting Classes. Class C-4 (Subordinated Claims) and Class D (Old Equity Interests) consist of (i) Interests (Class D) or (ii) Claims that have been subordinated to other Classes of Claims receiving distributions under the Plan pursuant to Bankruptcy Code section 510 (Class C-4). I am advised and believe that there are no other similarly situated Classes.

53. In addition, I am advised that there is a reasonable basis for the disparate treatment of the Claims in Class E (Intercompany Claims), and the Claims are treated appropriately according to the differences. Specifically, the treatment of Claims in Class E is appropriate in light of the fact that the Plan calls for the substantive consolidation of the Debtors' Estates. Accordingly, the treatment of the Claims in Class E is reasonable, appropriate, and necessary.

54. Finally, I am advised that there is no unfair discrimination arising from the purchase of certain General Unsecured Claims by the First Lien Lenders because such purchase constitutes permissible (i) claims trading or (ii) sharing of the First Lien Lenders' recovery under the Plan on account of the Secured portion of their Claims.

55. The Plan Is Fair and Equitable With Respect to the Rejecting Classes. I am advised and believe that the Plan is “fair and equitable” with respect to Class C-1 (General Unsecured Claims), Class C-4 (Subordinated Claims), Class D (Old Equity Interests) and Class E (Intercompany Claims) because, as a result of the Valuation, none of the above Rejecting Classes will receive any distributions or retain any property under the Plan nor will any Classes of Claims senior to such Classes receive property with a value that exceeds the allowed amount of their respective Claims.

Liquidation Analysis

56. I personally assisted with the preparation and analysis of the estimated recoveries that Holders of Impaired Claims under the Plan would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code (the "Liquidation Analysis"). As with the Valuation, the Liquidation Analysis was prepared by both WCP and RCLCO. The Liquidation Analysis is attached to the Disclosure Statement as Exhibit E and is incorporated herein by reference.

57. The Liquidation Analysis estimates the value of the Debtors' real estate assets under liquidation, representing a range of assumptions relating to the risk and costs incurred during liquidation. The DCF analysis performed in connection therewith derives an estimated value of the Debtors' real estate assets by discounting the unlevered projected free cash flows a buyer or buyers of the Debtors' assets could expect to achieve, based on market projections, to a net present value as of the Effective Date. RCLCO used a discount rate range of 25% to 30% in the Liquidation Analysis, reflecting the higher risk premium required by investors under this scenario. Based on these methodologies, and after further review, discussions, considerations and assumptions, WCP estimates that the liquidation value of the Debtors' real estate assets as of January 1, 2010 ranges from \$44.2 million to \$55.0 million, with a midpoint of \$49.3 million.

58. As reflected in the Liquidation Analysis, WCP performed the Liquidation Analysis on a consolidated basis and did not provide a liquidation value for each individual Debtor entity. The first lien indebtedness and second lien indebtedness total approximately \$415 million, which indebtedness is secured by first and second liens, respectively, on substantially all of the Debtors' assets at each Debtor entity. Given that the Liquidation

Analysis reflects a midpoint value of \$49.3 million, I believe that there is no value available for Claims beyond the first lien indebtedness at any Debtor entity on either a liquidation or going concern basis.

59. I believe the assumptions underlying the Liquidation Analysis are reasonable, and that the Liquidation Analysis provides an indication of the chapter 7 liquidation value of the Debtors' real estate assets and the distributions that Holders of Claims would receive under such circumstances.

60. It is my understanding, based on discussions with the First Lien Steering Committee's attorneys, that the "absolute priority rule" would be applicable to liquidation proceedings under chapter 7. It is also my understanding that, under such rule, no junior creditor could receive any distribution until all senior creditors have been paid in full, and no equity holder would receive any distribution unless all creditors have been paid in full. The Liquidation Analysis applies the absolute priority rule and indicates that Holders of Secured Claims would receive less than the full value of their Claims and that Holders of General Unsecured Claims and Interests would receive no distribution. The result of this analysis is therefore substantially less favorable to creditors than the proposed Plan.

Reasonableness of Financial Projections and Feasibility

61. I understand, based on discussions with the First Lien Steering Committee's counsel, that the Bankruptcy Code's requirement for confirmation of a plan is one of "feasibility." In other words, the Court must determine that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor.

62. I personally assisted with the preparation of certain projections (the "Projections"), which are annexed to the Disclosure Statement as Exhibit D and are

1 incorporated herein by reference. For purposes of determining whether the Plan satisfies
 2 this feasibility standard, the First Lien Steering Committee, through WCP and RCLCO, have
 3 analyzed the ability of the Debtors to meet their obligations under the Plan and retain
 4 sufficient liquidity and capital resources to conduct their businesses.
 5

6 63. As set forth in the Disclosure Statement, the Debtors' revenue is derived
 7 from the construction and sale of single family homes on all single-family lots currently in
 8 inventory, as well as on certain multifamily and commercial parcels where it was
 9 determined that single-family homes were the highest and best use. The key factors driving
 10 the Debtors' financial performance and revenues are: (1) average sales price; (2) average
 11 cost of construction; (3) land development costs and; (4) annual home sales and closings.

12 64. Pricing and sales velocity for these homes were projected to recover from
 13 their currently depressed levels, as determined by an analysis of recent and historical sales
 14 data, to more sustainable level of growth by 2011. Additional revenue is derived from the
 15 sale of certain land parcels at prices and dates supportable by market conditions, as well as
 16 the operation and sale of the Tuscany Golf Course.
 17

18 65. Like the Valuation, the Projections assume an Effective Date of January 1,
 19 2010 with Allowed Claims and Allowed Interests treated as described in the Plan. The
 20 Projections include unaudited pro-forma balance sheets, income statements, and cash flow
 21 statements from January 1, 2010 through December 31, 2014.
 22

23 66. The Projections should be read in conjunction with the significant
 24 assumptions and qualifications set forth in Exhibit D to the Disclosure Statement, which
 25 comprise an integral part of the Projections and should be referenced in connection with any
 26 review of the Projections, and I hereby incorporate by reference all such information.
 27

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1 67. Any financial projections are only estimates. Actual results may vary
2 considerably because assumptions may prove not to be correct, and forecasts of future
3 economic conditions are by their nature highly volatile. However, I believe that the
4 Projections are a reasonable estimate of the prospective financial performance of the
5 Debtors.

6 68. I believe that based on the Projections, the Reorganized Debtors will have the
7 financial capability to satisfy their obligations following the Effective Date pursuant to the
8 Plan, including the payment of all cash distributions contemplated by the Plan.

9
10
11 I declare under penalty of perjury that the foregoing is true and correct.
12 Executed this 11 day of January, 2010.

13 By:


Richard Dix

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